

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)	
)	Case No. 3:19-bk-1971
CAPSTONE PEDIATRICS, PLLC,)	
)	Chapter 11
Debtor.)	
)	
)	
CDS BUSINESS SERVICES, INC. d/b/a)	
NEWTEK BUSINESS CREDIT,)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. 3:20-ap-90140
)	
AMERICA CARES TRUST d/b/a)	
CARENATION,)	
)	
Defendant.)	

**JOINT MOTION FOR SCHEDULING ORDER
FOR ACCOUNTING AND RECONCILIATION**

CDS Business Services, Inc. d/b/a Newtek Business Credit (“**CDS**”) and America Cares Trust, Inc. d/b/a CareNation (“**CareNation**”) (CDS and CareNation collectively the “**Parties**”) by and through the undersigned counsel, jointly move the Court for entry of a Scheduling Order for a certain accounting and reconciliation process, as more specifically outlined herein. As grounds for this Joint Motion,

1. The parties have each asserted rights to certain funds contained in the “**DIP Accounts**,” as defined in the Complaint. Apart from the proceeds of a certain “**PPP Loan**” to Defendant (see Doc. 10 at p. 2 and Doc. 10-2), the parties each dispute the scope and amount of the other’s claims to DIP Account funds.

2. In an attempt to resolve their disputes expeditiously, the parties have agreed to collaborate on an accounting and reconciliation of the DIP Accounts to determine the parties' respective ownership rights in proceeds of accounts receivable deposited into the DIP Accounts since the closing of the sale contemplated by the Asset Purchase Agreement (**APA**) between the Debtor and the Defendant on July 20, 2020 (the "**Accounting and Reconciliation**").

3. The purpose of the Accounting and Reconciliation is to determine dates of service attributable to proceeds of accounts receivable deposited into the DIP Accounts, which will help the parties determine their respective shares of accounts receivable to date. To complete this process, it will be necessary for the Defendant to provide initial disclosures of documents and other information, specifically including, but not limited to, remittance reports, which contain certain "protected health information" as defined by the Health Insurance Portability and Accountability Act (**HIPAA**) 42 U.S. C. § 1320d *et seq.* (the "**Initial Disclosures**") Some of the Initial Disclosures contain protected health information for periods prior to the closing of the APA, requiring the Debtor's input and consent. On October 23, 2020, this Court entered an "Agreed Qualified HIPAA Protective Order for Initial Disclosures" (DE No. 39) (the "**Protective Order**") to set forth the process by which CDS can verify the authenticity of information provided to it by CareNation while ensuring that disclosures of protected health information made during the Accounting and Reconciliation are only as reasonable and necessary for completion of the accounting and reconciliation.

4. The parties desire to complete the Accounting and Reconciliation as soon as possible and seek the entry of a Scheduling Order to ensure dates certain for completion of same and the exchange of respective reports outlining the conclusions of each party. Attached to this Motion is a proposed Agreed Scheduling Order containing the specific phases and previously negotiated

deadlines for said phases. As of the date of filing this Motion, the Parties are meeting and conferring in good faith to ensure the deadlines contained in the proposed Agreed Scheduling Order are met.

WHEREFORE, the Parties respectfully pray for the entry of the attached proposed Scheduling Order.

Respectfully submitted,

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-and-

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on December 22, 2020. Notice of this filing was sent by operation of the Court's electronic filing system to all those parties specifically requesting electronic service and as indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system. In addition, notice was sent to the following via electronic mail:

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